EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr R Ravera	**v**	Whitbread Group Plc

Heard at: Cambridge **On:** 10 December 2018

Before: Employment Judge Tynan

Appearances
For the Claimant: In person
For the Respondent: Mr I Hartley, Solicitor

RESERVED JUDGMENT

1. The claimant's claim that he was unfairly dismissed by the respondent is not well-founded and accordingly the claim is dismissed.

RESERVED REASONS

1. On 12 February 2018, the claimant presented a claim form to the tribunal in which he claimed that he had been unfairly dismissed by the respondent. He worked for the respondent from 27 June 2012 until 29 January 2018 when he resigned his employment with immediate effect. The claimant asserts that he was constructively dismissed. This is denied by the respondent.

2. The claimant represented himself and gave evidence in support of his claim. The respondent was represented by Mr Hartley. For the respondent I heard evidence from Mr Fellows, an Area Manager who dealt with a disciplinary issue in relation to the claimant in the weeks prior to his resignation, and also from Mr Mason, another Area Manager who was appointed to hear the claimant's appeal against the outcome of the disciplinary proceedings but, as set out below, who did not in fact determine the appeal. All three witnesses were honest and straight-forward in their evidence to the tribunal.

3. There was a bundle of documents comprising 314 pages of documents. The claimant's criticism that the hearing bundle contained many irrelevant documents seems to have been borne out by the fact that very few documents in it were in fact referred to in the course of the hearing, including none of the documents after page 136. The hearing bundle seems not to have been an agreed bundle. However, I established at the outset of the hearing that the documents upon which the claimant wished to rely, numbered 1 to 15 in a separate bundle he brought to tribunal, were in fact all contained within the bundle filed by the respondent.

4. The evidence and submissions concluded just after 4pm, which did not allow sufficient time for me to reach and deliver my judgment. Accordingly, I confirmed to the parties that I would reserve my judgment.

Findings

5. The claimant worked as an Operations Manager for the respondent at its Stevenage Premier Inn Hotel. He was a diligent and committed employee. In Autumn 2017, certain record-keeping discrepancies came to light, namely the number of recorded covers and breakfast promotions at the hotel was discovered by the respondent to significantly exceed the number of guests staying at the hotel and meals being eaten. This triggered an investigation by the respondent's retail auditor, Hannah Weston. In his evidence the claimant was critical of the respondent's retail audit function, which he felt had focused on finding evidence against him rather than having engaged in a genuine investigation to establish the facts. However, he was asked about the discrepancies by Mr Hartley and acknowledged their potential scale. The average 'sleeper breakfast ratio' (SBR) was 225%, against an expected figure of approximately 45%. The figures suggested that each guest was eating two breakfasts whereas, on average, only 45% of guests might be expected to take breakfast. The figures understandably gave rise to concerns.

6. Ms Weston interviewed various individuals including the claimant on 14 and 15 November 2017 and reinterviewed the claimant again on 22 November 2017 before submitting a detailed investigation outcome report on 24 November 2017 (pages 69 – 78 of the hearing bundle). Her report concluded:

   "Throughout the investigation I have been left with many concerns around Richard's competency as an Operations Manager. Regardless of his alleged lack of F & B experience, he has demonstrated significant gaps in his knowledge as an operator combined with an inability to realise the shortfalls and highlight them to his line manager".

7. By a letter of the same date, Ms Weston invited the claimant to attend a disciplinary hearing on 28 November 2017 in relation to allegations of gross misconduct. Her letter detailed seven alleged breaches of the Finance

Policy Manual and enclosed approximately 20 documents that would be considered at the hearing. She also provided the claimant with a copy of the respondent's Disciplinary Policy, warned him that one outcome of the disciplinary hearing was that the claimant might be dismissed and reminded him of his right to be accompanied. In the event, the claimant received a final written warning.

8. Immediately following receipt of Ms Weston's letter dated 28 November 2017, the claimant wrote to Mr James Rider, an Operations Director at the respondent stating that he was raising a matter of extreme importance. His letter is at pages 81 to 84 of the hearing bundle. In his letter to Mr Rider the claimant stated that he was raising a formal grievance against Ms Weston. His grounds for doing so are set out in two bullet points, the second of which is divided into two further sub-bullet points. Over the second and third pages of his letter the claimant made a detailed request for information and documents from the respondent. He readily accepted at tribunal that his request in this regard did not constitute a grievance and further acknowledged that Mr Fellows had endeavoured to provide the information and documents he had requested, save where employee confidentiality precluded this.

9. The 'grievance' may be summarised as follows:

   a. The claimant alleged that he had been denied the opportunity of a follow up discussion with Ms Weston, and thereby denied an opportunity to put forward evidence, when a telephone conversation between them was cut short on 22 November 2017, with the result he claimed that her investigation was inadequate;

   b. The claimant further alleged that he was being treated differently to other employees by being subjected to a formal disciplinary hearing and also insofar as the retail audit team had examined his transactions going back over several months rather than just over the last month. He described the difference in treatment as bullying and harassing behaviours under the Equality Act 2010, but did not identify any particular protected characteristic of his. He also described it as unfair treatment. It is not obvious to me that he was complaining, or intending to complain, that he was being unlawfully discriminated against on the grounds of a protected characteristic, and he has not brought any such claim in this tribunal.

10. The respondent's position, in short, is that these matters were inextricably linked to the disciplinary case and accordingly that they should be dealt with as part of that process rather than as a separate grievance. Mr Rider wrote to the claimant to that effect in an email dated 27 November 2017, (page 87 of the hearing bundle). I note he went on to say to the claimant in his email,

    "You will have and should take (a) the opportunity to give your full version of events and any further information that should be considered, and (b) the opportunity to challenge whether you are being treated fairly and equally".

11. The claimant accepted, in response to questions by Mr Hartley, that the decision in the disciplinary proceedings lay with Mr Fellows as chair of the disciplinary hearing and not with Ms Weston. However, he felt that had he been able to convey more information to Ms Weston it was not inevitable that the matter would have progressed to a disciplinary hearing. That is slightly at odds with his later concession under cross-examination that the disciplinary charges were potentially serious, amounted to potential gross misconduct under the respondent's disciplinary policy and at least warranted him receiving a disciplinary warning. Nevertheless, I accept his further point that the investigation was his opportunity to provide relevant information. However, in that regard I note that the claimant initially met with Ms Weston on 14 November 2017 in a meeting that is documented to have commenced at 11:45 am and only to have concluded at 3:35 pm, and that he met her again on 22 November 2017 in a meeting lasting just over three hours. In which case the claimant was able to set out his case within the investigation process over a total period of seven hours. The disciplinary hearing records evidence that, inclusive of breaks, Mr Fellows went on to meet with the claimant for nearly six hours before coming to his decision on the disciplinary charges.

12. Questioned by Mr Hartley, the claimant accepted that the concerns in the first page of his letter of 27 November 2017 do not raise any issues outside the disciplinary process and are central to the fairness or otherwise of that process. However, he disagreed that they should be discussed within the disciplinary process, expressing his position in terms that a grievance would be *"my meeting"*. He felt that the disciplinary process should have been stopped until his concerns were looked into. He went on to say, *"If I asked for a formal grievance I expect to have it".*

13. The disciplinary hearing scheduled for 28 November 2017 did not go ahead and was rescheduled for 4 December 2017 to enable the claimant's union representative to attend, though in the event he was unable to do so and the claimant attended without representation. The meeting minutes confirm that Ms Weston read out the allegations at the outset of the meeting, albeit Mr Fellows proceeded immediately to invite the claimant to take him through the issues in his letter of 27 November 2017 to Mr Rider. The 4 December 2017 meeting minutes run to 12 pages. The meeting reconvened on 19 December 2017 and the minutes of that meeting run to seven pages. At page 105 of the hearing bundle, those minutes record the claimant referring to his grievance letter and expressing surprise about being invited to a disciplinary hearing. They then record that Mr Fellows asked if the claimant felt differently now, to which the claimant responded that he felt his information was being considered now. A few moments later he told Mr Fellows, *"Yes, more comfortable now".*

14. The 4 December 2017 meeting minutes also record that Mr Fellows told the claimant that his plan was to take all the information away and to consider it over the following 48 hours. He said,

"Forgive me, I'll go as quickly as I can. Won't make a decision until I am ready, if that takes a few more days, it will be in everyone's best interests."

To which the claimant responded,

"Absolutely fine."

15. In the event, Mr Fellows finalised his outcome report on 21 December 2017, namely within 48 hours of the hearing as he had hoped to do. It is a detailed and reasoned report. Mr Fellows' evidence, which I accept, is that he worked on the report all day on 21 December. However, the outcome itself was not notified to the claimant in writing until 2 January 2018 when Mr Fellows wrote to the claimant. Again, it is a detailed and reasoned letter. It is not in dispute that Mr Fellows telephoned the claimant on or around 21 December 2017 to let him know his decision, namely that he had found him guilty of gross misconduct and was imposing a final written warning, albeit the detailed reasons followed immediately after the Christmas and New Year holiday.

16. In the event the claimant did not see Mr Fellows' letter until 15 January 2018 as he was staying with his father in Cornwall and only saw the letter on his return home. In the meantime, on 14 January 2018 the claimant wrote to his manager, Ian Oliver resigning his employment. His email is at pages 120 and 121 of the hearing bundle. He resigned on notice. Although his email refers to the investigation and disciplinary process being hard hitting, the claimant did not cite the concerns in his letter of 27 November 2017 as the reason, or even one of the reasons, why he was resigning his employment, nor did he suggest that his concerns had not been addressed. Likewise, he did not complain of any delays on Mr Fellows' part. Instead he cited a long-standing health issue which seemed to have been aggravated by the stress of recent events and said that he had been strongly encouraged to change his lifestyle. His email refers to not being in safe and fair hands and that he felt his position had become untenable. However, the email does not elaborate further and makes no specific allegations. The claimant returned to the issue of his health, as well as a recent family bereavement, and wrote,

"These have made me put a lot into perspective and made me realise that life is too short and I need to focus on my home life for now.

But for now, I must focus on my own and my family's well being."

17. At the outset of the tribunal hearing, the claimant referred to his 14 January 2018 resignation as a *"voluntary resignation",* an observation that I pursued further with the claimant when he gave his evidence. He reiterated that his resignation was a voluntary act on his part. I invited him to re-read his email of 14 January 2018 and to then tell me what he considered had informed

his decision to resign. He said he had spoken with his father and his doctor, that he didn't feel well and that he felt he couldn't go on. Whilst he said he wasn't particularly happy with the investigation I find that that was not an operative factor in his decision to resign. Instead health issues and a family bereavement had led him to reappraise his personal situation and to focus on his home life. Although I am satisfied that the stress of the disciplinary proceedings was a factor in his health issues, I cannot conclude that the stress was a result of any particular failing on the part of the respondent. The claimant's evidence at tribunal concluded with him stating that it was a voluntary resignation fuelled by emotions. It was, he repeated, *"emotional and voluntary".*

18. Having given notice to resign on 14 January 2018, the following day the claimant returned home to Mr Fellows' letter of 2 January 2018 (pages 117 to 119 of the hearing bundle). I note that Mr Fellows letter does not address the concerns in the claimant's letter of 27 November 2017. Nor does the letter refer to the claimant having sought to raise a grievance, albeit there was no absolute need for Mr Fellows to do so given his email of 27 November 2017.

19. On 20 January 2018, the claimant emailed Mark Gabb to inform him that he wished to appeal the decision to impose a final written warning. His stated grounds of appeal were that the penalty was too great and that he had concerns over aspects of the process, albeit he would elaborate further in due course. Strictly, the appeal was out of time, but the claimant was notifying his intention to appeal within five days of first having sight of the written decision.

20. Mr Gabb did not respond to the claimant's letter of appeal. At some point during January 2018 Mr Gabb was hospitalised. Mr Mason could not tell me how long for, nor whether his health issues were serious. In my judgment it was incumbent upon the respondent to bring forward evidence at tribunal as to the reasons for Mr Gabb's silence.

21. On 29 January 2018, the claimant emailed Mr Oliver. He referred to having sleepless nights and that he had returned to Cornwall. He said that he was experiencing stress and anxiety and was due to see his doctor again. He had been off work sick since resigning his employment. He went on to express concerns in relation to the following matters:

    a. Despite assurances from Mr Fellows that he would receive all his paperwork before Christmas, this had not happened;

    b. That he only received the disciplinary outcome letter on 15 January 2018;

    c. That the final written warning was, *"punitive to my incentive measures"*;

    d. That the final written warning was too harsh and unfair;

e. That there were fundamental errors in the process and breaches of the Equality Act 2010;

f. That Mr Gabb had ignored his appeal.

22. The claimant went on to complain in his email to Mr Oliver that Mr Fellows' outcome letter did not include a grievance outcome report or confer a right of an appeal in respect of that outcome. He said,

"…I feel there have been serious breaches of my employment terms and therefore must issue an immediate resignation with immediate notice as I have been advised it would be inappropriate to continue with my employment as I should not be accepting any breach in employment terms".

23. The breaches referred to are not set out, but the respondent approached the tribunal hearing on the basis that the claimant was complaining not just of the failure to respond formally to his grievance, but of the matters referred to in the first page of his letter which I have summarised at paragraph 21 above.

Law and Conclusions

24. Subject to any relevant qualifying period of employment, an employee has the right not to be unfairly dismissed by his employer (section 94 of the Employment Rights Act 1996).

25. 'Dismissal' for these purposes includes "where the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct" (section 95(1)(c) of the Employment Rights Act 1996).

26. The claimant claims that he resigned by reason the respondent's conduct.

27. In this respect I must separately consider the respondent's conduct as at 14 January 2018 when the claimant gave notice resigning his employment, and as at 29 January 2018 when he terminated his employment with immediate effect during his notice period.

28. It is not every breach of contract that will justify an employee resigning their employment without notice. The breach must be sufficiently fundamental that it goes to the heart of the continued employment relationship. Even then, the employee must actually resign in response to the breach and not delay unduly in relying upon the breach as bringing the employment relationship to an end. Section 95(1)(c) of the Employment Rights Act 1996 recognises that an employee may elect to resign on notice in response to the employer's conduct and still be entitled to bring a claim of unfair

dismissal. However, the employer's conduct must be such as to warrant summary termination.

29. The claimant has not identified the express or implied terms of his employment contract upon which he relies in support of his claim to have been constructively dismissed. However, his emails of 14 and 29 January 2018 describe the conduct about which complaint is made and upon which the claimant relies in stating that he was entitled to terminate his employment.

30. It is an implied term of all contracts that the parties will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to seriously damage or destroy the essential trust and confidence of the employment relationship – **Malik v Bank of Credit and Commerce International SA 1997 ICR 606, HL**.

31. In **WA Goold (Pearmak) Ltd v McConnell and Anor 1995 IRLR 516** the Employment Appeal Tribunal held that there was an implied term in a contract of employment that the employer would "reasonably and promptly afford a reasonable opportunity to [its] employees to obtain redress of any grievance they may have". Subsequently in **Hamilton v Tanberg Television Ltd** the EAT suggested that **WA Goold (Pearmak) Ltd** is of limited scope as the case indicated that no procedure was available to the employees, whereas in **Hamilton** the criticism was of the quality of the employer's investigation.

32. Neither the claimant nor the respondent had thought fit to provide the tribunal with a copy of the claimant's contract of employment/statement of particulars of employment or the respondent's grievance policy and procedure, which is unfortunate given that the claim is one of constructive unfair dismissal and focuses in particular upon the respondent's alleged handling of the claimant's grievance. I have set out above what I consider to be the relevant implied terms of the employment relationship.

33. The claimant makes certain criticisms of the respondent in his email of 14 January 2018, but they are of a very general nature, and it is simply not possible to discern from the email what, if any, specific complaints he makes or why they might amount to a repudiatory breach of contract. What is clear from the claimant's email, and which he put beyond doubt in his evidence at tribunal, is that he was resigning for personal reasons rather than in response to any conduct on the part of the respondent. The disciplinary proceedings may have been unwelcome and may have aggravated an underlying health condition, but there was no suggestion by the claimant in his email of 14 January 2018 that the respondent was acting unreasonably or otherwise in breach of contract in commencing a disciplinary process or in its handling of the disciplinary proceedings. If, (which I do not find), by its conduct, the respondent was in breach of contract as at 14 January 2018, that did not cause the claimant to resign. He resigned voluntarily for health and family reasons. To the extent therefore that the claimant claims his

resignation on 14 January 2018 was a constructive dismissal, that claim must fail.

34. I turn then to his subsequent resignation on 29 January 2018. It was not suggested by Mr Hartley, and I am not aware of any legal authority to the effect, that an employee may not rely upon section 95(1)(c) of the Employment Rights Act 1996 in circumstances where he has already given notice resigning his employment for reasons unrelated to the respondent's conduct. However, the fact an employee has already resigned his employment would likely be relevant to the issue of causation of loss if he were to succeed in establishing that he was subsequently constructively dismissed.

35. The claimant considered that the disciplinary proceedings were irrelevant to his claim and objected to the respondent's inclusion of material from the disciplinary proceedings in the hearing bundle. Notwithstanding that his email of 29 January 2018 refers to alleged shortcomings in the disciplinary process, in the claimant's various submissions at tribunal he was clear that his principal complaint was the respondent's alleged failure to take forward the concerns in his letter of 27 November 2017 as a formal grievance and failure to afford him a right of appeal. Nevertheless, given that the claimant's email of 29 January 2018 cites various concerns in relation to the disciplinary process it is important that I consider these, including to what extent they were a factor in the claimant's decision communicated on 29 January 2018 to resign his employment with immediate effect.

36. I refer to page 125 of the hearing bundle where the claimant's concerns are documented. They are summarised at paragraph 21 above. My conclusions in relation those matters are as follows:

    a. Mr Fellows did not give the claimant any assurance that he "would get all [his] paperwork before Christmas". I refer to my findings at paragraph 14 above. Mr Fellows provided the Claimant with verbal confirmation of his decision within 48 hours of their second meeting and followed this up in writing on a timely basis on 2 January 2018 immediately following the Christmas and New Year holiday. I cannot identify any respect in which the respondent was thereby in breach of contract, let alone that its conduct entitled the claimant to resign.

    b. The claimant only received written confirmation of the outcome of the disciplinary hearing on 15 January 2018 when he returned home from Cornwall. With the benefit of hindsight the respondent might have emailed its letter to the claimant, but I do not consider the respondent to have breached contract by sending the letter to the claimant by post. The principal reason the claimant only received the letter on 15 January 2018 was because he was away from home. At any time prior to 15 January 2018 the claimant might have contacted the respondent to request that the outcome letter should be emailed to him or posted to him at his father's address.

c. According to the claimant, the outcome (by which I assume he means the imposition of a final written warning) "was punitive to my incentive measures". That is a consequence of his final written warning rather than evidence in itself of a breach of contract. I deal separately below with the imposition of a final written warning.

d. Whilst the claimant describes the disciplinary penalty as unduly harsh and unfair, he has not identified why the respondent was in breach of contract in imposing a final written warning. As to the penalty being too harsh and unfair, the employment tribunals have long been cautioned against substituting their own views on penalty for the views of the employer. The question always is whether the employer has acted within the band of reasonable responses. In other words, has the employer imposed a disciplinary sanction that a reasonable employer could impose in the circumstances even if other employers might have imposed a lesser sanction? I accept Mr Fellows' evidence that he gave careful consideration to a range of possible outcomes. He had the benefit of discussing what had happened during two lengthy meetings with the claimant and coming to a reasoned view as to the claimant's culpability. Furthermore, he considered the matter again in detail after meeting with the claimant on 19 December 2017. There is no evidence before me that Mr Fellows acted outside the band of reasonable responses. On the contrary I am satisfied that he approached his task in good faith, took care to ensure the claimant was able to put forward his case and actively listened to what the claimant had to say. Given the number and magnitude of the reported discrepancies, which the claimant himself admitted were potentially serious and warranted a warning, I accept that Mr Fellows acted reasonably and within the margin of discretion available to him. I cannot identify any respect in which the respondent was thereby in breach of contract.

e. The claimant alleged that there were fundamental errors in the process. He also said that there were breaches of the Equality Act 2010, though did not elaborate further. Aside from his complaint above that the disciplinary penalty was unduly harsh and his complaint below that his grievances were not handled appropriately, his allegation that there were fundamental errors in the process is at odds with the claimant's closing submission that he was "happy with the proceedings". The claimant has the burden of proving, on the balance of probabilities, that he was constructively dismissed and in my judgment, he has failed to discharge the burden upon him in relation to this particular complaint. In his evidence to the tribunal he did not identify any specific procedural failings on the part of the respondent that constituted a breach of his contract, let alone a fundamental breach which caused him to him resign his employment. His allegation that his rights under the Equality Act 2010 may have been infringed has never been clarified.

f. The claimant complained that his appeal had been ignored by Mr Gabb and expressed concern that this may have been a delaying tactic. I can deal with the suspicion that the respondent was delaying very briefly; I accept that Mr Gabb was hospitalised and that there was no intention to delay matters in order to prejudice the claimant's position. As noted already, I do not have a copy of the claimant's terms/contract of employment or the respondent's grievance policy and procedure to help form a view as to the claimant's reasonable expectations in terms of how his appeal would be handled. Certainly though, I can understand why it might be said to be a breach of the implied term of trust and confidence for an employer not to conduct an internal appeal within a reasonable time. In this case, the claimant heard nothing from Mr Gabb for 8 days. Clearly that was not desirable. The claimant might reasonably have expected to have received an acknowledgment of his grievance sooner. However, in order for the implied term of trust and confidence to be breached, the respondent must have acted without reasonable and proper cause. Although the evidence before me is limited I am satisfied, on the balance of probabilities, that there was a proper cause for the delay, namely Mr Gabb's hospitalisation. In any event, even had there been no reasonable or proper cause for the delay, I do not consider that a delay of 8 days was such as to seriously damage or destroy the essential trust and confidence of the relationship particularly in the context of what had until then been a thorough disciplinary process that, on the claimant's own submission, he was happy with.

37. As regards the claimant's concerns that he did not receive a grievance outcome report or a specific right of appeal in respect of his grievance, I agree with the respondent that the matters raised in the claimant's email of 27 November 2017 were inextricably linked to the disciplinary case and, as such, that the respondent reasonably concluded that they could and should be dealt with as part of that process. The ACAS Code of Practice on Disciplinary and Grievance Procedures recognises that this is a legitimate approach for an employer to take. I cannot agree with the claimant when he said in his evidence that, "a grievance is my meeting" or that the disciplinary process should have been stopped until his concerns had been looked into. A grievance does not of itself and in all circumstances override a disciplinary process. Nor does attaching the label "grievance" to a concern mean that the concern must necessarily be investigated under the employer's grievance procedure. Concerns, even if they are legitimately in the nature of a grievance, may be capable of being dealt and addressed within what is (notionally) a disciplinary process. In my judgment, this was such a case.

38. **WA Goold (Pearmak) Ltd** decided that there is an implied term in a contract of employment that the employer will "reasonably and promptly afford a reasonable opportunity to [its] employees to obtain redress of any grievance they may have". The Employment Appeal Tribunal did not proscribe the

process by which an employee might obtain such redress. In my judgment the respondent reasonably afforded the claimant a reasonable opportunity to obtain redress in respect of the matters that were concerning him by dealing with these within the disciplinary process, and it did not breach contract by dealing with the concerns in that way. As the 4 December 2017 meeting minutes evidence, the claimant's concerns were the first issue that Mr Fellows sought to discus with him when they met. Mr Fellows was evidently alive to his concerns and prioritised discussion of them. He spent nearly four hours with the claimant on 4 December 2017 and adjourned the hearing to enable further enquiries. By the time of the adjourned hearing on 19 December 2017 the claimant confirmed that he was comfortable with the process and that Mr Fellows had looked into the matters he was raising. In other words, if (which I do not find) there were any shortcomings in Ms Weston's investigation, these were dealt with by Mr Fellows considering the claimant's detailed submissions and, where appropriate, undertaking further enquiries into the matters raised by him. Once again, with the benefit of hindsight, Mr Fellows might have documented in his letter of 2 January 2018 that the claimant had expressed himself on 19 December 2017 to be satisfied with Mr Fellows' approach. However, it is very clear from Mr Fellows' letter, and it would equally have been apparent to the claimant, that Mr Fellows had taken on board the claimant's representations, including those in the claimant's letter of 27 November 2017, since he accepted amongst other things the claimant's point that certain of the allegations were linked, he acknowledged failings on the part of the respondent, and he took into account that there were material mitigating circumstances.

39. On the basis that I do not consider the claimant had any right or reasonable expectation of a stand-alone grievance process, it follows that I do not consider he had a free-standing grievance right of appeal. In his letter dated 2 January 2018 Mr Fellows informed the claimant that he had the right to appeal against his decision. That provided the means by which the claimant could seek further redress in respect of any unresolved concerns he may have, particularly if he was not in fact satisfied with Mr Fellows' handling of his concerns. In the event the claimant did not avail himself of his right of appeal as he resigned his employment with immediate effect and declined the respondent's invitation both to withdraw his resignation and to continue with the appeal. Given my conclusions above, the respondent did not by its conduct effectively deprive the claimant of his right of appeal. In accordance with its contractual obligations to the claimant it continued to afford the claimant a reasonable opportunity to obtain redress in respect of any matters that were concerning him. The claimant lost the opportunity for further redress because he elected to resign with immediate effect in circumstances where, in my judgment, the respondent's conduct did not entitle him to do so.

40. In all the circumstances, in my judgment the claimant was not dismissed for the purposes of section 95(1)(c) of the Employment Rights Act 1996 and as such his complaint that he was unfairly dismissed must fail.

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Employment Judge Tynan

Date: …14 January 2019……..

Sent to the parties on: .....

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For the Tribunal Office